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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,614	05/31/2001	Yuko Tamaki	35.G2820	7059

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EXAMINER

ASTORINO, MICHAEL C

ART UNIT PAPER NUMBER

3736

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/867,614

Applicant(s)

TAMAKI ET AL.

Examiner

Michael Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 101-175 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 145, 149, 150, 153, 154, 158, 159, 162, 163, 167, 168 and 172-175 is/are allowed.
- 6) ☒ Claim(s) 101-144, 146-148, 151, 152, 155-157, 160, 161, 164-166 and 169-171 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

The examiner acknowledges the amendment filed February 19, 2004, wherein claims 1-100 have been cancelled and claims 101-175 have been newly added. Claims 101-175 are currently pending.

#### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 101-144, 144/146, 144/151, 147, 148, 152, 152/155, 152/160, 156, 157, 161, 161/166, 164, 165, 169, 170, and 171 are rejected under 35 U.S.C. 102(e) as being anticipated by Schulze et al US Patent Number 6,443,890 B1.

3. In regards to claims 100-108, Schulze et al disclose a body temperature managing system comprising a thermometer (36) and a body temperature terminal (12); said thermometer comprising measuring means for measuring body temperature (42), and transmitting means for transmitting body temperature data measured by said measuring means (inherent); and said body temperature terminal comprising receiving means (42) for receiving body temperature data transmitted by said transmitting means, accumulating means (42) for accumulating body temperature data transmitted from said transmitting means, until predetermined operations are

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performed (46), and outside transmitting means (56) for outside transmitting of body temperature data accumulated by said accumulating means., comprising:

- a receiving step for receiving body temperature data (36);

- an accumulating step for accumulating body temperature data received in said receiving step until predetermined operations are performed (column 5, lines 1-25; and column 6, lines 10-15); and

- a recognizing step (column 4, lines 44-54);

- and enciphering step (column 4, lines 55-62)

- a transmitting step for enciphering and transmitting said body temperature data accumulated in said accumulating step (column 4, lines 55-63).

Schulze et al further disclose, wherein body temperature data wirelessly transmitted from a thermometer is received (column 2, lines 15-61).

Schulze et al further disclose a body temperature managing method according to claim 1, wherein said receiving step further comprises a display step for displaying received body temperature data (84 alarm light; and also column 4, lines 34-43).

Schulze et al further disclose wherein said transmitting step further comprises a notifying step for notifying that the transmitting step has concluded. The transmission step is completed using a cellular network, when the connection is terminated the user is notified.

Note to Applicant: Claims 109-136 reference “a facility” it is unclear what the meaning of “facility” is. The specification does not mention a definition for the term “facility” and as such the plain meaning of the term will be used. As such the examiner, views the location of a doctor

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in Schulze et al. as a facility. Additionally, it is inherent that Schulze et al. device is one where the internet is used not only to communicate with a doctor in one location, but many different doctors in various location. As such, it is clear to the examiner that the "medical care provider" is symbolic of any one of multiple doctors/ health providers at various locations. The examiner's contention is supported by the disclosure of a "911 operator."

4. In regards to claims 109-136, Schulze et al disclose a body temperature managing method, comprising: a body temperature data storing step for storing body temperature data (42); a body temperature data disclosing step for disclosing to a hospital said body temperature data stored in said storing step (56; Column 6, lines 49-68 and column 7, lines 1-29), in the event that instructions for receiving advice from a professional are received; a diagnosis data receiving step wherein diagnosis data, diagnosed by a professional based on said body temperature disclosed in said body temperature data disclosing step, is received; and a diagnosis data transmitting step for transmitting diagnosis data received in said diagnosis data receiving step. It is inherent that communication from the health care provider to the patient by voice or Internet is transmission of diagnostic data.

Schulze et al further disclose wherein body temperature data obtained in said body temperature data obtaining step is enciphered body temperature data (column 4, lines 55-63).

Schulze et al further disclose, Schulze et al disclose wherein said disclosing step further comprises a deciphering step for deciphering said enciphered body temperature data (inherent, column 4, lines 55-63).

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Schulze et al further disclose wherein the destination of transmission of said transmitted diagnosis data in said diagnosis data transmitting step is one of at least a personal computer, cellular phone, or a portable terminal (column 6, lines 49-68).

Schulze et al further disclose a body temperature managing system comprising: a server (30); and hospital terminals (figure 1, "medical care provider" 28); connected to said server by a network (26); said server comprising body temperature data storing means for storing body temperature data, judgment receiving means (received alarm information; columns 5 and 6) for receiving judgment regarding whether or not to receive professional advice, body temperature data disclosing means for disclosing said body temperature data stored in said storing means to a hospital in the event that said judgment receiving means receives judgment to receive professional advice (column 6, lines 49-68), diagnosis data receiving means for receiving diagnosis data of a diagnosis made by a professional based on the body temperature data disclosed by said body temperature data disclosing means (column 7, lines 1-29), and diagnosis data transmitting means for transmitting diagnosis data received by said diagnosis data receiving means; and said hospital terminal comprising viewing means for viewing body temperature data disclosed by said body temperature data disclosing means, and diagnosis data transmitting means for transmitting to said server diagnosis data of a diagnosis made by a professional based on the body temperature data, viewed by said viewing means.

Schulze et al further disclose wherein said viewing means comprises body temperature data transmitting means wherein said body temperature data is transmitted from said server to said hospital terminal (column 6, lines 49-67 and column 7, lines 1-29; see also figure 1).

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Schulze et al further disclose wherein said viewing means comprises in-server viewing means for viewing said body temperature data stored within said server (column 6, lines 49-67 and column 7, lines 1-29; see also figure 1), by the hospital inputting a deciphering key (inherent).

Schulze et al further disclose a body temperature managing system comprising: a server (30); and thermometer terminals (12) connected to said server (30) by a network (26); said thermometer terminal comprising first receiving means (42) for receiving body temperature data measured by a thermometer, storing means (42) for storing body temperature data received by said first receiving means, and transmitting means (56) for transmitting body temperature data stored by said storing means; and said server (30) comprising second receiving means (inherent) for receiving body temperature data transmitted by said transmitting means, disclosing means (28) for disclosing to a hospital said body temperature data received by said second receiving means, diagnosis data receiving means (28) for receiving diagnosis data of a diagnosis made by a professional (medical care provider) based on the body temperature data disclosed by said disclosing means, and outside transmitting means (12) for outside transmitting of diagnosis data received by said diagnosis data receiving means (column 6, lines 49-67 and column 7, lines 1-29; see also figure 1).

5. In regards to claims 137-143, Schulze et al disclose a body temperature managing method, device and storage medium, comprising: a storing step for storing enciphered body temperature data (column 4, lines 55-62); a duplicate creating step for creating a duplicate of said body temperature data; a data deciphering step for deciphering said body temperature data

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created in said duplicate creating step (inherent); an analyzing step for analyzing body temperature data deciphered in said data deciphering step (column 6, lines 49-67); and a deleting step for deleting said deciphered body temperature data following completion of said analyzing step (inherent).

6. Schulze et al further disclose a body temperature managing system (see figure 1 and columns 4-7) wherein a server (30), thermometer terminal (12) for transmitting body temperature data, and a thermometer (36) are connected via a network (26); said thermometer (36) comprising measuring means for measuring body temperature, and transmitting means for transmitting body temperature data measured by said measuring means; said body temperature terminal (12) comprising body temperature data receiving means for receiving body temperature data transmitted by said body temperature data transmitting means, storing means for storing body temperature data received with said body temperature data receiving means, enciphering means (column 4, lines 59-62) for enciphering body temperature data stored in said storing means, and enciphered data transmitting means for transmitting enciphered data enciphered by said enciphering means; and said server (30) comprising enciphered data receiving means (inherent) for receiving enciphered data transmitted by said enciphered data transmitting means; storing means for storing enciphered data received by said enciphered data receiving means, duplicate creating means for creating a duplicate of said enciphered data stored by said storing means, deciphering means (inherent) for deciphering said enciphered data created by said duplicate creating means, analyzing means (inherent) for analyzing deciphered data deciphered by said data deciphering means, and deleting means for deleting said deciphered data following said analyzing means finishing (inherent).



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Schulze et al. additionally, discloses in column 4, lines 59-62, that “All such data is transmitted in an encrypted and possibly non-attributable form with limited access using methods known in the art so that patient privacy and confidentiality is maintained.”

7. In regards to claims 144, 144/146, 144/151, 147, 148, 152, 152/155, 152/160, 156, 157, 161, 161/166, 164, 165, 169, 170, and 171, Schulze et al disclose a body temperature managing method, device and storage medium, comprising: a body temperature data obtaining step for obtaining body temperature data (36); a body temperature data storing step for storing said body temperature data obtained in said obtaining step (42); a body temperature data analyzing step for analyzing body temperature data based on said body temperature data stored in said storing step (84); and an analyzed data transmitting step for outside transmitting of analyzed data analyzed in said analyzing step (56). Additionally, the instruction step is inherent, for if there was never an instruction to sense, the device would never work. This contention is supported by (column 7, lines 2-4).

Schulze et al further disclose wherein data obtained in said body temperature data obtaining step is enciphered data (column 4, lines 55-63).

Schulze et al further disclose comprising a judging step for judging whether or not a predetermined time has come (84), wherein in the event that judgment is made in said judging step that said predetermined time has come, said body temperature data is analyzed in said body temperature data analyzing step based on said body temperature data (column 6, lines 49-67).

Schulze et al further disclose wherein said body temperature data analyzing step further comprises a deciphering step for deciphering said body temperature data (inherent, column 4, lines 55-63).

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Schulze et al further disclose wherein the destination of transmission of said analyzed data transmitted in said diagnosis data transmitting step is one of at least a personal computer, cellular phone, or a portable terminal (column 6, lines 49-68).

Schulze et al further disclose a body temperature managing method, device and storage medium, having beforehand sample data for making comparative reference with body temperature data, said method comprising: a body temperature data obtaining step for obtaining body temperature data (36); a body temperature data storing step for storing said body temperature data obtained in said obtaining step (42); an analyzing step for analyzing said body temperature data stored in said storing step (84); a diagnosing step for diagnosing by making comparative reference of analyzed results analyzed in said analyzing step with said sample data (column 4, lines 55-59); and a transmitting step for transmitting the diagnosis results diagnosed in said diagnosing step (56).

***Allowable Subject Matter***

Claims 145, 149, 150, 153, 154, 158, 159, 162, 163, 167, 168, and 172-175 are allowed as incorporating previously allowed subject matter. As stated previously these claims are combined with electronic commerce.

Additionally, claims 145/146, 145/151, 153/155, 153/160, 154/155, 154/160, 162/166, 163/166 are allowable as being dependent on an allowable claim, but would be allowed only if each cited claim is re-written to exclude dependency on rejected claims.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Thursday, 10:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Beth Jones can be reached on (703) 308-3400. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Astorino  
July 09, 2004